

House Study Bill 741

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
COMMERCE, REGULATION AND
LABOR BILL BY CHAIRPERSON
JENKINS)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to deficiencies in the construction or design of
2 residential real property.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 6509HC 81
5 kk/je/5

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1 1 Section 1. NEW SECTION. 657B.1 DEFINITIONS.
1 2 1. "Builder" includes a builder, developer, or original
1 3 seller of residential real property that is sold on or after
1 4 July 1, 2006.
1 5 2. "Claimant" means an individual owner of residential
1 6 real property and includes an owner of a condominium unit and
1 7 an association of a common interest community. "Claimant"
1 8 does not include a person not in privity of contract with a
1 9 builder.
1 10 3. "Residential real property" means real property which
1 11 is an owner-occupied single-family or two-family dwelling,
1 12 located in this state, occupied or used or intended to be
1 13 occupied or used for residential purposes, including an
1 14 interest in any real property covered under chapter 499B.
1 15 Sec. 2. NEW SECTION. 657B.2 NOTICE OF CLAIM.
1 16 Prior to filing an action for the recovery of damages
1 17 arising out of, or related to, a deficiency in the
1 18 construction, design, specifications, survey, plan,
1 19 supervision, testing, or observation of construction of
1 20 residential real property against a builder, the claimant
1 21 shall provide written notice by certified mail or personal
1 22 service to the builder that the construction, design,
1 23 specifications, survey, plan, supervision, testing, or
1 24 observation of construction of the claimant's residence is
1 25 deficient or violates an applicable housing code or city
1 26 ordinance. The notice shall state the claimant's name,
1 27 address, and contact information. The notice shall also state
1 28 that the claimant alleges a deficiency or violation against
1 29 the builder and shall describe the nature of the claim in
1 30 sufficient detail for the builder to determine the nature and
1 31 location of the alleged deficiency or violation.
1 32 Sec. 3. NEW SECTION. 657B.3 BUILDER REQUIREMENTS.
1 33 1. A builder who receives notice pursuant to section
1 34 657B.2 shall provide the claimant a written acknowledgment of
1 35 receipt of the claimant's notice of claim within ten business
2 1 days after receiving the notice of claim.
2 2 2. Prior to the transfer of title of newly constructed
2 3 residential real property, the builder shall provide written
2 4 notice to the purchaser of the availability of mediation
2 5 services pursuant to chapter 679C. After receiving a notice
2 6 pursuant to this subsection, the purchaser shall provide the
2 7 builder with written acknowledgment of receiving the notice.
2 8 Sec. 4. NEW SECTION. 657B.4 BUILDER'S OFFER TO REPAIR.
2 9 Within ten business days after the builder provides an
2 10 acknowledgment of the claimant's notice of claim pursuant to
2 11 section 657B.3, the builder may offer in writing to compensate
2 12 the claimant or repair the deficiency. An offer to compensate
2 13 the claimant shall be a bona fide offer to compensate the
2 14 claimant for damages to the residential real property of the
2 15 claimant. An offer to repair the deficiency shall include a
2 16 detailed statement identifying the particular deficiency to be
2 17 repaired, an explanation of the nature, scope, and location of

2 18 the repair needed, and an estimated completion date of the
2 19 repair which shall be within twenty-one business days of the
2 20 builder's receipt of the notice of claim, assuming reasonable
2 21 weather-related construction conditions, or as otherwise
2 22 agreed to by the parties.

2 23 Sec. 5. NEW SECTION. 657B.5 CLAIMANT'S REMEDIES.

2 24 1. A claimant shall not file an action for the recovery of
2 25 damages arising out of, or related to, deficiencies in the
2 26 construction, design, specifications, survey, plan,
2 27 supervision, testing, or observation of construction of
2 28 residential real property against a builder, unless the
2 29 claimant has provided a notice of claim as required by section
2 30 657B.2 and the builder fails to do any of the following:

2 31 a. Make an offer to compensate the claimant or repair a
2 32 deficiency in compliance with section 657B.4.

2 33 b. Compensate a claimant or perform an adequate repair to
2 34 correct the deficiency after making an offer to compensate or
2 35 repair under section 657B.4, which is accepted by the

3 1 claimant.

3 2 c. Complete a repair within the time required by section
3 3 657B.4.

3 4 d. Comply with any other requirement of this chapter.

3 5 2. This section does not preclude a claimant from seeking
3 6 remedies available through a customer service procedure
3 7 described in a contract, warranty, or other document provided
3 8 by the builder.

3 9 Sec. 6. NEW SECTION. 657B.6 STATUTE OF LIMITATIONS.

3 10 If a builder makes an offer to repair pursuant to section
3 11 657B.4, the provision of a notice of claim pursuant to section
3 12 657B.2 tolls any applicable statute of limitations from the
3 13 date of service of the notice of claim through the estimated
3 14 completion date of the repair.

3 15 EXPLANATION

3 16 This bill relates to deficiencies in residential real
3 17 property. The bill requires a claimant, as defined by the
3 18 bill, to provide a builder of residential real property with a
3 19 notice of a claim against the builder prior to commencing an
3 20 action against the builder for damages arising from
3 21 deficiencies in the construction, design, specifications,
3 22 survey, plan, supervision, testing, or observation of
3 23 construction of the residential real property. The notice of
3 24 claim is required by the bill to state the claimant's name,
3 25 address, and contact information, and to describe in detail
3 26 the nature of the violation alleged against the builder.

3 27 The bill requires builders to provide a claimant with a
3 28 written acknowledgment within 10 days after receiving the
3 29 notice of claim. The bill requires builders to provide a
3 30 written notice to any claimant of the availability of
3 31 mediation services. A claimant who receives a notice of
3 32 available mediation services shall provide the builder an
3 33 acknowledgment of receiving the notice.

3 34 The bill allows a builder to offer to compensate the
3 35 claimant for a deficiency or repair the deficiency. The offer
4 1 to compensate or repair must be made within 10 business days
4 2 after the builder provides an acknowledgment of the claimant's
4 3 notice of claim. An offer to compensate must be a bona fide
4 4 offer and an offer to repair must include a detailed statement
4 5 identifying the particular deficiency to be repaired, an
4 6 explanation of the nature, scope, and location of the repair,
4 7 and an estimated completion date of the repair. The estimated
4 8 completion date of the repair is required by the bill to be
4 9 within 21 days of the builder's receipt of the notice of
4 10 claim, within reasonable weather conditions, or as otherwise
4 11 agreed to by the parties.

4 12 The bill prohibits a claimant from filing an action for
4 13 damages from deficiencies in construction, design,
4 14 specifications, survey, plan, supervision, testing, or
4 15 observation of construction of residential real property
4 16 against a builder unless the claimant has provided a notice of
4 17 claim to the builder and the builder has failed to make an
4 18 offer to compensate or repair as provided by the bill, failed
4 19 to compensate or perform an adequate repair, failed to
4 20 complete a repair within the time required by the bill, or
4 21 failed to comply with any other provision of the bill. The
4 22 bill does not prohibit a claimant from otherwise seeking other
4 23 remedies available by contract, warranty, or a similar
4 24 customer service remedy provided by the builder.

4 25 The bill provides that if a builder makes an offer to
4 26 repair as provided by the bill, the applicable statute of
4 27 limitations is tolled from the date of the service of the
4 28 notice of claim to the estimated completion date of the

4 29 repair.
4 30 LSB 6509HC 81
4 31 kk:nh/je/5